Supreme Court of the United States.

OCTOBER TERM, 1965.

No. 1052.

WALTER LOGAN,
Petitioner,

v.

EMPRESA LINEAS MARITIMAS ARGENTINAS
ET ALS.,
Respondents.

BRIEF OF THIRD-PARTY DEFENDANT, JARKA CORPORATION OF NEW ENGLAND, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Statement of the Case.

This suit by petitioner, a longshoreman, was begun in and then removed from the Massachusetts Superior Court to the United States District Court for the District of Massachusetts. Petitioner sought recovery from respondent shipowner and third-party plaintiff, Empresa Lineas Maritimas Argentinas, for personal injuries solely upon unseaworthiness (R.A. 78). Third-party defendant, Jarka Corporation of New England, petitioner's employer, was impleaded by shipowner, which claimed indemnity for alleged breach of third-party defendant's warranty to per-

form unloading services for the ship in a safe, careful and workmanlike manner. At the trial in the District Court petitioner sought to recover on the theory that the hatch board which fell was short (R.A. 74, 104, 121, 122, 156). The jury was not persuaded (R.A. 94), nor was the Court of Appeals for the First Circuit.

Argument.

The Supreme Court should not grant certiorari to the First Circuit because—

(A) There is no conflict with decisions of this Court or other Courts of Appeals; and

(B) Claims of prejudice of Judge Wyzanski are nonsense.

A. Absence of Conflict.

In *Mitchell* v. *Trawler Racer, Inc.*, 362 U.S. 539, 550 (1960), this Court rejected the proposition that a vessel owner was obligated to furnish an accident-free ship, and reaffirmed the familiar rule that a vessel owner's absolute duty was limited to furnishing a vessel and appurtenances reasonably fit for their intended use. Perfection is not required.

Because of the happening of an unexplained accident (the jury having rejected petitioner's explanation, Petitioner's Appendix, p. 26), petitioner asks this Court to burden the shipowner with the duty of an insurer against the unknown and the unforeseeable: a perfect ship.

Having failed to persuade the jury of the cause of his injury, petitioner should not now be allowed to circumvent its verdict by enunciating a theory of absolute responsibility of a vessel owner for an inexplicable accident.

B. No Bias or Prejudice.

The third-party defendant not only concurs and joins with the brief of the shipowner on the frivolity of petitioner's claim of judicial bias, but, in addition, calls to the Court's attention that almost all that is said on pages 19 and 20 of petitioner's brief, except the quotation from the Court of Appeals' opinion of counsel's improprieties, has no foundation in the record (Petitioner's Appendix, pp. 32 and 33).

Conclusion.

Third-party defendant Jarka submits that there is no reason for granting certiorari, and argues that the petition be denied.

Respectfully submitted,

THOMAS D. BURNS,

Attorney for Third-Party Defendant,

Jarka Corporation of New England.